

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAPHNE P. RAND, by and through DEBRA J.
DOLCH, as Conservator of the Person and Estate
of DAPHNE P. RAND, Conservatee, on Behalf
of Themselves and All Others Similarly Situated,

No. C 09-00639 SI

ORDER RE: DISCOVERY

Plaintiff,

v.

AMERICAN NATIONAL INSURANCE
COMPANY, a Texas corporation,

Defendant.

Plaintiff seeks an order compelling defendant to disclose identities of and contact information for putative class members.¹ Specifically, plaintiff asks that the Court compel defendant to: (1) identify all senior citizens who have complained about ANICO's deferred annuities; and (2) "identify all persons, including any senior citizens, who purchased a deferred annuity issued by you in the state of California."² Plaintiff also requests production of "[a]ll complaints and documents related to complaints submitted by any person, including any senior citizen, concerning ANICO deferred annuities issued in the state of California."³

¹The parties' letter briefs are found at Docket Nos. 81 and 82.

²Plaintiff's Interrogatories Nos. 2 and 3.

³Plaintiff's Request for Production No. 1.

1 **I. Interrogatories Nos. 2 and 3**

2 It is up to the sound discretion of the trial court whether to permit discovery prior to class
3 certification. *See Kamm v. California City Development Company*, 509 F.2d 205, 209 (9th Cir. 1975).
4 “In determining whether to grant discovery the court must consider its need, the time required, and the
5 probability of discovery resolving any factual issue necessary for the [class] determination.” *Id.* at 210.

6 Defendant argues that names and contact information of policyholders are not relevant to the
7 issue of class certification and that disclosure is not reasonably calculated to lead to admissible
8 evidence. The Court disagrees. The names and contact information of individuals who have purchased
9 deferred annuities and submitted complaints to ANICO are relevant for class certification requirements,
10 particularly issues of commonality, typicality, and adequacy of representation as required under Fed.
11 R. Civ. P. 23(a). In particular, individual policyholders are likely to have information relevant to the
12 way in which ANICO marketed its deferred annuities. Plaintiff is entitled to seek this factual
13 information so she may determine whether these individuals have similar complaints and whether she
14 is an appropriate class representative. Thus, the information plaintiff seeks is clearly relevant to issues
15 of commonality and typicality of plaintiff’s representation of the class.

16 Although California law generally permits discovery of the identity and contact information of
17 putative plaintiffs in a class action suit, *Pioneer Electronics (USA) Inc. v. Superior Court*, 150 P.3d 198,
18 205 (Cal. 2007), defendant contends that the California Insurance Code prohibits insurance companies
19 from disclosing certain personal information obtained in connection with an insurance transaction,
20 including the policyholder’s name and address, Cal. Ins. Code §791.13. An insurance company may
21 disclose such information, however, if the policy holder gives written authorization, *id.* §791.13(a), or
22 if disclosure is in response to a judicial order, *id.* §791.13(h).

23 Citing *Colonial Life & Accident Ins. Co. v. Superior Court*, 647 P.2d 86 (Cal. 1982), defendant
24 urges the court to deny plaintiff’s request for disclosure of client names and addresses until the putative
25 class members agree in writing to have such information provided to plaintiff. In *Colonial Life*, the
26 court required plaintiff to obtain policyholders’ affirmative written consent prior to compelling the
27 insurance company to disclose private insurance records. *Id.* *Colonial Life*, however, is distinguishable
28 in several respects. First, in addition to policyholder names and contact information, the plaintiff in

1 *Colonial Life* sought discovery of insurance records. *Id.* at 87. The names and addresses of the insured
2 were disclosed to the plaintiff prior to receiving client consent, and affirmative written consent was
3 required only for the plaintiff to receive insurance records. *Id.* at 88. Here, plaintiff only seeks names
4 and contact information of all policyholders who have purchased a deferred annuity and all senior
5 citizens who have complained about ANICO's deferred annuities, and she does not seek policyholder
6 records. Moreover, *Colonial Life* was not a class action lawsuit and contact with the policyholders was
7 restricted, in part, due to concerns about the plaintiff's counsel soliciting new clients. *Id.* at 91. The
8 Court finds that disclosure of the names and addresses of the policyholders is not unduly intrusive and
9 is warranted for class action discovery.

10 Defendant's concern for its policyholders' privacy is not completely unfounded, however, and
11 the Court recognizes the possibility that policyholders may have concerns as to why ANICO has
12 disclosed this information. Disclosure of policyholder identities is covered by the scope of the existing
13 protective order in this case, and such information "shall be used by persons receiving it only for the
14 purposes of this litigation or settlement of this action." Protective Order ¶ 5. In addition, the Court
15 instructs plaintiff's counsel to inform each policyholder at the outset of the initial contact that he or she
16 has a right not to speak with counsel and that if he or she chooses not to speak with counsel, counsel will
17 immediately terminate contact and not contact them again. Additionally, counsel will inform the
18 policyholder that his or her refusal to speak with counsel will not prejudice his or her rights as a class
19 member if the Court certifies the class. Finally, counsel is to keep a record for the Court of
20 policyholders who make it known that they do not wish to be contacted. These additional measures are
21 in accord with what other courts have order in similar circumstances, *see York v. Starbucks*, No.
22 08-7919, 2009 U.S. Dist. LEXIS 92274, at *5 (C.D. Cal. June 30, 2009), and the Court believes these
23 protections will adequately safeguard privacy rights of the policyholders while allowing plaintiff
24 necessary discovery.

25 The Court GRANTS plaintiff's motion to compel responses to Interrogatories 2 and 3.
26 Defendant shall provide responses by **February 15, 2010**, unless the parties agree to a different date.
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1 **II. Request for Production No. 1**

2 Plaintiff also seeks production of “[a]ll complaints and documents related to complaints
3 submitted by any person, including any senior citizen, concerning ANICO deferred annuities issued in
4 the state of California.”⁴ Defendant has provided plaintiff with a log of complaints, but refuses to
5 produce copies of the complaints and related documents. Plaintiff has not addressed any inadequacy
6 with the log but rather cites to a number of cases in which courts have compelled production of
7 consumer complaints. None of the cases cited, however, dealt with disclosure of complaints to
8 insurance companies. As defendant points out, the contents of policyholders’ complaint files include
9 personal financial and medical information, and thus policyholders have a greater expectation of privacy
10 with respect to these files and documents. In accordance with the California Insurance Code and
11 California privacy laws, the policyholders’ records and complaint files should be afforded greater
12 privacy protection. Cal. Ins. Code §791.13; *see also Pioneer Electronics*, 150 P.3d at 204-205 (noting
13 importance of consumers’ expectation of privacy); *Colonial Life*, 647 P.2d 86. Accordingly, the Court
14 orders that plaintiff may obtain the policyholder complaints only if the procedures outlined in *Colonial*
15 *Life* are followed and prior affirmative written consent is obtained from the policyholders. If plaintiff
16 wishes to pursue discovery of the complaints in this manner, the parties shall meet and confer.

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18 **IT IS SO ORDERED.**

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20 Dated: February 9, 2010



SUSAN ILLSTON
United States District Judge

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⁴Plaintiff’s Request for Production No. 1.